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the bonds to his own use without the consent of the owner, was guilty of larceny.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 211.]

8. Larceny (§ 55*)—Evidence Held Sufficient to Warrant Conviction.—In a prosecution for larceny, evidence held sufficient to warrant conviction.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

Error to Corporation Court of Lynchburg.

Lash Hutchinson was convicted of larceny, and brings error. Affirmed.

Hester & Hester, of Lynchburg, for plaintiff in error.

John R. Saunders, Atty. Gen., for the Commonwealth.

DAVIS, Director General of Railroads *v.* MERRILL.

June 15, 1922.

[112 S. E. 628.]

1. Trial (§ 253 (9)*)—Instruction Concerning Liability of Master for Act of Insane Employee Held Properly Refused under the Evidence.—In an action for death caused by act of defendant's insane servant by means of a pistol, court properly refused to instruct that, if the jury believed from the evidence that servant's duties as crossing watchman did not authorize or require him to commit the act, but that it was his personal act outside of the scope of his duty, then they must find for the defendant, was properly refused, where there was evidence tending to support plaintiff's contention that defendant was liable for its conduct in employing such servant for gateman, in that it knew, or by the exercise of ordinary care ought to have known, he was an unfit person for the position.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 727.]

2. Trial (§ 260*)—Instruction Covered by Given Instruction Properly Refused.—Court properly refused to give an instruction covered by a given instruction.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

3. Master and Servant (§ 302 (3)*)—Master Liable for Assaults of Servant within Scope of Employment.—Both corporation and individuals should be required to answer in damages for wanton and malicious assaults inflicted upon others by their servants while acting within the scope of the servant's employment and duty, and it matters not whether the act of the servant is due to a lack of judgment, the infirmity of temper, or the influence of passion, or that the servant goes beyond his strict line of duty and authority in inflicting such injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

4. Master and Servant (§ 303*)—Railroad Liable for Death by Malicious Act of Unfit Watchman.—Where gates at railroad crossing were closed, and watchman, incensed by request that he raise the gates, began firing, causing death, the railroad was liable where the employee was not a fit person for the position.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

5. Master and Servant (§ 330 (3)*)—Evidence Held to Show Negligence in Employing Unfit Watchman.—In an action against a railroad for death occasioned by malicious act of watchman at crossing by means of a pistol evidence held to sustain finding that the railroad was negligent in employing an unfit person for the position.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

Error to Circuit Court of City of Norfolk.

Action by E. S. Merrill, administrator of Claudia Harrell, deceased, against John Barton Payne, Director General of Railroads, predecessor of J. C. Davis, Director General of Railroads and Agent under section 206 of the Transportation Act of 1920. Judgment for plaintiff, and the latter brings error. Affirmed.

Hughes, Little & Seawell, of Norfolk, and *F. M. Rivinus*, of Philadelphia, Pa., for plaintiff in error.

Tazewell Taylor, of Norfolk, and *H. R. Leary*, of Edenton, N. C., for defendant in error.

MOORE v. KERNACHAN et al.

June 15, 1922.

[112 S. E. 632.]

1. Depositions (§ 108*)—Objections to Competency of Witness Not Brought to Attention of Court Waived.—Objections on the taking of a deposition to the competency of a witness were waived where not brought to the attention of the court at the hearing.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 928.]

2. Conversion (§ 15 (1)*)—Setting Aside Land as Fund for Payment of Debts Effected a Conversion.—A clause in a will setting aside certain land as a primary fund for the payment of debts effected an equitable conversion of the land, at least to the extent necessary to pay the debts.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 500.]

3. Conversion (§ 1*)—Nature of Doctrine.—The doctrine of equitable conversion is a pure creature of equity, unknown to the law, and is a mere incident or application of the maxim that equity treats that as done which ought to be done.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 499.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.